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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 TOBY J. MASSE,
11 Plaintiff,
12 v.
13 DOUGLAS A. WADDINGTON, *et al.*,
14 Defendants.

Case No. C07-5717 BHS/KLS

ORDER DENYING MOTION FOR
COSTS

15 Presently before the Court is Plaintiff's motion for expenses for Defendants' failure to
16 produce documents. Dkt. # 34. Having carefully reviewed Plaintiff's motion, Defendants'
17 opposition (Dkt. # 35), and balance of the record, the Court finds that the motion should be denied.

18 **I. BACKGROUND**

19 Plaintiff Toby Massee filed this Section 1983 action against several employees of the
20 Washington Corrections Center (WCC), claiming that they violated his rights when they retaliated
21 against him for filing prison grievances and conducting his prison disciplinary hearing in violation
22 of his due process rights. Dkt. # 7. Plaintiff claims that the Defendants confiscated and lost
23 several items of personal clothing and when he complained, they responded by placing him in
24 segregation and filed a false disciplinary report against him. Dkt. # 7, ¶¶ 16, 19-20. At his

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26 ORDER - 1

1 disciplinary hearing, Plaintiff alleges that prison officials refused to allow Plaintiff to present
2 witnesses or the assistance of a staff advisor. *Id.*, ¶¶ 22-25.

3 On September 26, 2008, the Court granted in part and denied in part, Plaintiff's motion to
4 compel the following documents: (1) DOC policies concerning personal property, cell searches,
5 contraband and segregation; (2) grievances filed by Plaintiff at WCC in 2007, and (3) records
6 pertaining to Plaintiff's religious preferences and to religious services received by Plaintiff at
7 WCC in 2007. Dkt. # 32. The Defendants objected to Plaintiff's request to the policies and
8 grievances primarily based on cost and because Plaintiff had equal access to the documents. The
9 Court ordered Defendant to produce copies of the DOC policies and grievances filed by Plaintiff.
10 *Id.* Defendants have complied with the Court's Order and have provided Plaintiff with copies of
11 these documents at Defendants' expense. Dkt. # 35, p. 2. The Court agreed with Defendants that
12 Plaintiff's request for records pertaining to his religious preference were not relevant to this case
13 and denied his motion to compel. Dkt. # 32.

15 **II. DISCUSSION**

16 If a motion to compel is granted in part and denied in part, the court may "apportion the
17 reasonable expenses for the motion." Fed. R. Civ. P. 37(a)(5)(c). On any motion to compel, even
18 those that have been fully granted or fully denied, expenses may not be awarded if the position of
19 the non-prevailing party was "substantially justified". Fed. R. Civ. P. 37(a)(5)(A)(ii); 37(a)(5)(B).

20 Defendants' objections to Plaintiff's requests were not frivolous, a portion of Plaintiff's
21 motion was denied, and it was not contested that Plaintiff also had access to the remaining
22 documents at issue. The Court ordered Defendants to produce the documents at their expense
23 based, in part, on Plaintiff's representation that he lacked sufficient funds and limited access to the
24 library. *See* Dkt. 32, p. 2 (*citing* Dkt. # 30, p. 4). Defendants have produced those documents at
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their expense.

III. CONCLUSION

Because Plaintiff's motion to compel was only granted in part and Defendants' objections were not frivolous, Plaintiff's motion for expenses (Dkt. # 34) is **DENIED**, and the parties are ordered to bear their own expenses related to Plaintiff's motion to compel.

DATED this 17th day of November, 2008.

Ken Lstrom

Karen L. Strombom
United States Magistrate Judge